

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
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JOSE ENCARNACION-CROSS,

Petitioner,

-v-

BRIAN MCAULIFFE and ERIC T. SCHEIDERMAN,  
Attorney General of the State of New York,

Respondents.  
-----X

17 Civ. 3603 (PAE) (GWG)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

*Pro se* petitioner Jose Encarnacion-Cross filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on April 28, 2017. Dkt. 1. On November 10, 2017, the state filed its opposition. On October 13, 2017, the Court referred the action to Magistrate Judge Gabriel W. Gorenstein for the preparation of a Report and Recommendation pursuant to 28 U.S.C. § 636(b). On April 23, 2018, Judge Gorenstein issued his Report and Recommendation to this Court.

**II. Discussion**

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). When specific objections are made, “[t]he district judge must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir.1997). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at \*2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v.*

*Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at \*4 (S.D.N.Y. July 8, 2009)); *see also*, e.g., *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

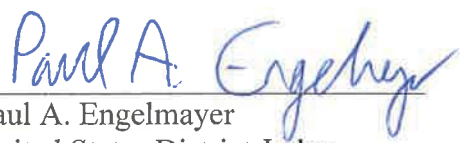
### CONCLUSION

Careful review of the thorough and well-reasoned Report reveals that there is no facial error in its conclusions. The Report, which is incorporated by reference herein, is adopted without modification. The petition for habeas corpus is denied. The Clerk of Court is directed to close this case.

The parties' failure to file written objections, as noted in the Report, precludes appellate review of this decision. *See Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008); *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam). The Court therefore declines to issue a certificate of appealability, and certifies that any appeal from this order would not be taken in good faith; therefore, *in forma pauperis* status is denied for the purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 445 (1962).

The Court directs the Clerk to mail a copy of this decision to petitioner at the address on file.

SO ORDERED.

  
Paul A. Engelmayer  
United States District Judge

Dated: July 10, 2018  
New York, New York